

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Bihua LIU  
U.S. Serial No. : 10/634,526  
Confirmation No. : 6893  
Filed : August 5, 2003  
Examiner : Derris Holt BANKS  
Art Unit : 3725  
For : FLOWING COLORS OIL PAINTING

Law Offices of Albert Wai-Kit Chan, PLLC  
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January 30, 2009

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**APPLICATION FOR PATENT TERM ADJUSTMENT**

A Notice of Allowance for the above-referenced application was mailed on January 14, 2009. Applicant submits herein an application for patent term adjustment under 37 CFR §1.705(b). Applicant hereby authorizes the Commissioner to charge to Deposit Account No. 50-1891 a fee of TWO HUNDRED DOLLARS (\$200.00) as set forth in 37 CFR §1.18(e) for filing an application for patent term adjustment.

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USSN	: 10/634,526	Art Unit	: 3725
Filed	: 08-05-2003	Date of Req. PTA	: 01-30-2009
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### **Statement of Facts**

#### The Correct Patent Term Adjustment

Applicant submits that the correct patent term adjustment should be 1556 days as a result of:

USPTO delay under 37 CFR§1.702(a)(1) - 135 days

USPTO delay under 37 CFR§1.702(a)(2) - 333 days

USPTO delay under 37 CFR§1.702(b) - 1088 days

Applicant delay under 37 CFR§1.704 - 8 days

#### USPTO Delay Under 37 CFR§1.702(a)(1)

This application was filed on August 5, 2003. The USPTO has failed to mail a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed. Thus, a period of adjustment of patent term due to examination delay starts from the day after the date that is fourteen months after the date on which the application was filed (i.e. October 6, 2004) and ending on the date of mailing of an action under 35 U.S.C. 132 (i.e. February 17, 2005), totaling 135 days.

#### USPTO Delay Under 37 CFR§1.702(a)(2)

The USPTO has failed to mail a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than four months after the date a reply was filed. Applicant filed a response on October 16, 2007. Thus, a period of adjustment of patent term due to examination delay starts from the day after the date that is four months after the date on which a reply was filed (i.e. February 17, 2008) and ending on the date of mailing

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of a notice of allowance under 35 U.S.C. 151 (i.e. January 14, 2009), totaling 333 days.

USPTO Delay Under 37 CFR §1.702(b)

The USPTO has failed to issue a patent within three years after the date on which the application was filed. Thus, a period of adjustment of patent term due to examination delay starts from the day after the date that is three years after the date on which the application was filed (i.e. August 6, 2006), and ends on the date a patent was issued, excluding any time consumed by (i) continued examination of the application under 35 U.S.C. 132(b); (ii) an interference proceeding under 35 U.S.C. 135(a); (iii) imposition of a secrecy order under 35 U.S.C. 181; (iv) review by the Board of Patent Appeals and Interferences or a Federal court; or (v) any delay in the processing of the application by the Office that was requested by the applicant.

Applicants submit that no time has been consumed by actions (i) to (v) listed above. Hence, the period beginning on August 6, 2006 and ending on the date of issuance of the patent should be counted as USPTO delay under 37 CFR §1.702(b).

In the Notice of Allowance mailed on January 14, 2009, the USPTO estimates that the patent will be issued on the Tuesday before the date that is 28 weeks after the mailing date of the Notice of Allowance, i.e. July 28, 2009. Accordingly, Applicant submits that the period beginning from August 6, 2006 and ending on July 28, 2009 should be counted as USPTO delay under 37 CFR §1.702(b), totaling **1088** days.

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The sum of the above USPTO delay under 37 CFR §1.702(a)(1), 37 CFR §1.702(a)(2), and §1.702(b), and excluding the overlapping period under §1.702(a)(2), totals 1223 days.

#### Applicant Delay Under 37 CFR §1.704

##### Delay Under 37 CFR §1.704(c) (8)

Applicant filed a Supplemental Response on October 24, 2007 after filing a Response to an office action on October 16, 2007. Hence, the period of adjustment set forth in 37 CFR § 1.704 (c) (8) shall be reduced by the number of days beginning on the day after the date the initial reply was filed (i.e. October 17, 2007) and ending on the date the Supplemental reply was filed (i.e. October 24, 2007), totaling 8 days.

##### Disputed Applicant Delay

The USPTO indicates there is a period of 451 days of Applicant delay from October 16, 2007 to January 9, 2009, apparently assuming that Applicant has submitted a Information Disclosure Statement after a reply to an Office Action has been filed. Applicant submits that there is no such delay.

Applicant did not submit an Information Disclosure Statement for this application on January 9, 2009. A copy of the Image File Wrapper of this application as printed from the USPTO's Private Patent Application Information Retrieval (PAIR) system is enclosed as **Exhibit A** (2 pages). A copy of the Display References tab of this application as printed from the USPTO's Private Patent Application Information Retrieval (PAIR) system is enclosed as **Exhibit B** (1 page). The Image File Wrapper and Display References tab clearly indicates that no Information

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Disclosure Statement was filed for this application on January 9, 2009.

Hence, Applicant submits that Applicant did not file an Information Disclosure Statement on January 9, 2009. Accordingly, Applicant submits that Applicant has not caused any period of delay from October 16, 2007 to January 9, 2009.

Terminal Disclaimer

Applicant submits that the present application is not subject to a terminal disclaimer.

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Concluding Remarks

In view of the above calculation, Applicant submits that there is a USPTO delay of 1223 days, and an Applicant delay of 8 days, resulting in a patent term adjustment of 1215 days.

If a telephone interview would be of assistance in rectifying the patent term adjustment of the present application, Applicant's undersigned attorney invites the Examiner to telephone him at the number provided below. If any additional fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 50-1891.

Respectfully submitted,

Albert Wai Kit Chan

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# Exhibit A

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**This application is officially maintained in electronic form. To View: Click the desired Document Description. To Download and Print: Check the desired document(s) and click PDF.**

### Bibliographic Data

Mail Room Date	Document Code	Document Description	Document Category	Page Count
<b>01-14-2009</b>	<b>NOA</b>	<b>Notice of Allowance and Fees Due (PTOL-85)</b>	<b>PROSECUTION</b>	<b>3</b>
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01-14-2009	892	List of references cited by examiner	PROSECUTION	1
01-14-2009	IIFW	Issue Information including classification, examiner, name, claim, renumbering, etc.	PROSECUTION	1
01-14-2009	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
01-14-2009	FWCLM	Index of Claims	PROSECUTION	2
01-14-2009	BIB	Bibliographic Data Sheet	PROSECUTION	1
12-17-2008	892	List of references cited by examiner	PRIOR ART	1
11-21-2008	STATUS.LET	Request for status of Application	PROSECUTION	3
11-21-2008	N417	EFS Acknowledgment Receipt	PROSECUTION	2
10-24-2008	N570	Communication - Re: Power of Attorney (PTOL-308)	PROSECUTION	1
10-24-2008	N570	Communication - Re: Power of Attorney (PTOL-308)	PROSECUTION	1
10-20-2008	PA..	Power of Attorney	PROSECUTION	1
10-20-2008	OATH	Oath or Declaration filed	PROSECUTION	2
10-20-2008	N417	EFS Acknowledgment Receipt	PROSECUTION	2
07-14-2008	STATUS.LET	Request for status of Application	PROSECUTION	1
05-22-2008	SRNT	Examiner's search strategy and results	PROSECUTION	6
10-27-2007	BIB	Bibliographic Data Sheet	PROSECUTION	1
10-24-2007	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	4
10-24-2007	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	1
10-18-2007	EXIN	Examiner Interview Summary Record (PTOL - 413)	PROSECUTION	2
10-17-2007	N570	Communication - Re: Power of Attorney (PTOL-308)	PROSECUTION	1
10-17-2007	N570	Communication - Re: Power of Attorney (PTOL-308)	PROSECUTION	1
10-16-2007	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
10-16-2007	SPEC	Specification	PROSECUTION	1
10-16-2007	CLM	Claims	PROSECUTION	3
10-16-2007	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	13
10-16-2007	TRTC	Transmittal to TC	PROSECUTION	3
10-16-2007	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
10-08-2007	PA..	Power of Attorney	PROSECUTION	1
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10-08-2007	PA..	Power of Attorney	PROSECUTION	2
10-08-2007	N417	EFS Acknowledgment Receipt	PROSECUTION	2
07-16-2007	CTNF	Non-Final Rejection	PROSECUTION	7
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07-16-2007	FWCLM	Index of Claims	PROSECUTION	1
07-16-2007	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1



06-29-2007	SRNT	Examiner's search strategy and results	PROSECUTION	1
06-20-2007	N416	Notice of Withdrawal from Issue Branch (PTOL-67)	PROSECUTION	1
12-05-2006	N417	EFS Acknowledgment Receipt	PROSECUTION	2
11-30-2006	STATUS.LET	Request for status of Application	PROSECUTION	1
11-13-2006	LET.	Miscellaneous Incoming Letter	PROSECUTION	1
11-07-2006	LET.	Miscellaneous Incoming Letter	PROSECUTION	1
09-08-2005	IFEE	Issue Fee Payment (PTO-85B)	PROSECUTION	1
06-17-2005	NOA	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	3
06-17-2005	NOA	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	6
06-17-2005	NFDR	Notice of Formal Drawings Required	PROSECUTION	1
06-17-2005	IIFW	Issue Information including classification, examiner, name, claim, renumbering, etc.	PROSECUTION	1
06-17-2005	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
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06-17-2005	BIB	Bibliographic Data Sheet	PROSECUTION	1
06-10-2005	SRNT	Examiner's search strategy and results	PROSECUTION	3
05-25-2005	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
05-25-2005	WCLM	Claims Worksheet (PTO-2022)	PROSECUTION	1
05-16-2005	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
05-16-2005	CLM	Claims	PROSECUTION	3
05-16-2005	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	1
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02-17-2005	FWCLM	Index of Claims	PROSECUTION	1
02-15-2005	SRNT	Examiner's search strategy and results	PROSECUTION	2
07-06-2004	LET.	Miscellaneous Incoming Letter	PROSECUTION	1
08-05-2003	TRNA	Transmittal of New Application	PROSECUTION	2
08-05-2003	SPEC	Specification	PROSECUTION	7
08-05-2003	OATH	Oath or Declaration filed	PROSECUTION	2
08-05-2003	ADS	Application Data Sheet	PROSECUTION	2
08-05-2003	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
08-05-2003	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
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08-05-2003	ABST	Abstract	PROSECUTION	1
08-05-2003	DRW	Drawings-only black and white line drawings	PROSECUTION	1

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# **Exhibit B**

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**U.S. Patent Documents**[How to download references](#) 3 Form(s) Found for Application Number 10/634,526

Date	Form Type
02-15-2005	PTO-892
06-29-2007	PTO-892
05-22-2008	PTO-892

**Reference Forms**

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07-16-2007	892	List of references cited by examiner	1
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**Foreign Patent and Non-Patent Documents**

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